

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

June 21, 2021

Tiera Fletcher  
Commissioner, ANC 7E02  
P.O. Box 6703  
Washington, D.C. 20019

**Re: ANC Authority to Hire Contractors**

Commissioner Fletcher:

You asked whether an Advisory Neighborhood Commission (“ANC”) may hire someone to manage communication and documents, and designate that person as an independent contractor.<sup>1</sup> Our understanding, based on your description, is that the person would perform this function under the ANC’s direction. An ANC may hire such a person, but how the ANC designates the employee—whether as an employee or independent contractor—is not controlling with respect to the employee’s status. Based on the description you have provided that person would be an employee, not a contractor, for the purposes of the District of Columbia Home Rule Act (“Home Rule Act”)<sup>2</sup> and the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”).<sup>3</sup> If you have questions about what tax requirements would apply to that person, you should reach out to either the federal Internal Revenue Service (for questions about federal tax law)<sup>4</sup> or the District’s Office of Tax and Revenue (for questions about District tax law).

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<sup>1</sup> We note that, in keeping with our ordinary approach, this letter only addresses the context you have asked us about. This letter does not reach other contexts, such as contracting with someone for certain one-time tasks like fixing a phone or repairing a burst pipe.

<sup>2</sup> Approved Dec. 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

<sup>3</sup> Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

We note that two of our prior letters indicate the opposite view. In an August 19, 1999 letter to Commissioner Jonda McFarlane, we indicated on p. 1 that “an ANC may hire an independent contractor.” See <https://oag.dc.gov/sites/default/files/2018-02/ANC-2-E-August-19-1999-Contract-Employee-for-Administrative-Services.pdf> (all websites last visited June 8, 2021). And in an April 8, 1993 letter to Commissioner Patricia Wamsley, we suggested (without overtly saying) that an ANC could lawfully hire an independent contractor. See <https://oag.dc.gov/sites/default/files/2018-02/ANC-3-C-April-8-1993-Eligibility-for-Health-and-Life-Insurance-Coverage.pdf>. Neither letter, however, offered analysis that would undergird this conclusion. Neither letter, therefore, calls the interpretation in this letter into question.

<sup>4</sup> See IRS, “Understanding Employee v. Contractor Distinction,” <https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation> (explaining the distinction and offering resources).

We start by spelling out, in general terms, the difference between an independent contractor and an employee. An “independent contractor” is someone who “is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it.”<sup>5</sup> An “employee,” on the other hand, is someone “who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.”<sup>6</sup> In many contexts, independent contractors are treated differently from employees. They may, for example, enjoy fewer benefits or protections. All of that said, different laws may use these words in different ways. For that reason, the question we answer here is limited to how the Home Rule Act and the ANC Act describe someone who, under the ANC’s direction, performs the kind of office administrative functions you have described.

The Home Rule Act describes such a person as an employee. Section 738 of the Home Rule Act (D.C. Official Code § 1-207.38) is the section that applies to ANCs, and what it provides is that an ANC may “employ staff.” Section 738(c)(2) authorizes ANCs to do this, and section 738(e) directs the District to allot funds to ANCs so that they may, among other things, “employ such staff as may be necessary.” These provisions use the word “employ” rather than “contract with.”<sup>7</sup> They also refer, not to independent agents, but to “staff,” a term often used as a synonym for employees.<sup>8</sup> Section 738(f) (D.C. Official Code § 1-207.38(f)) reinforces this by directing the Council to establish uniform “guidelines with respect to the employment of persons by each Advisory Neighborhood Commission, which shall include fixing the status of such employees with respect to the District government.”

The ANC Act, which adopted the guidelines the Home Rule Act required, likewise describes someone performing the functions you have outlined as an employee. Section 16(o) of the Act (D.C. Official Code § 1-309.13(o)) echoes the Home Rule Act by saying that an ANC “may employ any person necessary to provide administrative support to the Commission.” It also directs each ANC to “establish position descriptions for employees that shall, at a minimum, broadly identify the qualifications and duties of the employees.”<sup>9</sup> Each employee “shall serve at the pleasure of the Commission,” and “shall be considered an employee of the District of Columbia government for the purposes of” certain provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.<sup>10</sup>

In sum, a person who provides the type of administrative support you describe functions as an employee, not an independent contractor, for purposes of the ANC Act and the Home Rule Act.

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<sup>5</sup> *Independent Contractor*, Black’s Law Dictionary (3d pocket ed. 2006).

<sup>6</sup> *Employee*, Black’s Law Dictionary (3d pocket ed. 2006).

<sup>7</sup> *See Employ*, Black’s Law Dictionary (3d pocket ed. 2006) (defining the verb “employ” as, among other things, a synonym for “hire”).

<sup>8</sup> *See Staff*, Dictionary.com (defining “staff” in this context as “a group of persons, as employees, charged with carrying out the work of an establishment or executing some undertaking”) (last visited June 8, 2021).

<sup>9</sup> D.C. Official Code § 1-309.13(o).

<sup>10</sup> *Id.*; *see* Letter to Comm’r Wamsley, Jan. 14, 1994, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-3-C-January-14-1994-Unemployment-and-Compensation.pdf> (discussing these benefits as of 1994); Office of Advisory Neighborhood Comm’ns, “Employment Opportunities,” <https://anc.dc.gov/page/employment-opportunities> (summarizing the wide range of ANC staff positions).

The person is hired as staff, executing duties established by the ANC, and serves at the pleasure of the ANC. This explains why other provisions in the ANC Act do not appear to contemplate the existence of someone providing regular administrative support to an ANC, under its direction, as an independent contractor. For example, section 16(h) of the ANC Act (D.C. Official Code § 1-309.13(h)) allows an ANC treasurer to “disburse to another Commissioner or employee of the Commission” – but not an independent contractor – “an amount not in excess of \$200 for authorized Commission expenditures through a Commission-established petty cash fund.” Likewise, section 14(g)(1) of the ANC Act (D.C. Official Code § 1-309.11(g)(1)) requires an ANC to make public the “names, salaries, titles, and dates of employment of all employees of the Commission,” with no reference to independent contractors.

The history of the ANC Act indicates the same. What is now section 16(o) of the ANC Act was added to the Act by section 2 of the Duties and Responsibilities of Advisory Neighborhood Commissions Act of 1975 (“Duties Act”),<sup>11</sup> although the Duties Act originally cast that provision as two different provisions: sections 16(c) and (d).<sup>12</sup> Section 16(c) stated that “[a]ll employees of a Commission shall be hired by the Commission,” and section 16(d) required each Commission to establish position descriptions for each employee and allowed employees to be hired “on a full-time or part-time basis and for an indefinite or for a definite term.”<sup>13</sup> The Council replaced this with the current language in section 3(f) of the Advisory Neighborhood Commission Act of 1990.<sup>14</sup> According to the committee, this 1990 legislation “amends the current provision regarding Commission employees by providing that staffpersons are considered employees of the District government for the limited purpose of being eligible for health and life insurance benefits,” although the Commission would be the “employer for the purpose” of section 16(o).<sup>15</sup> Nowhere in this history did the Council suggest that an ANC could bypass the requirements and protections applicable to employees by designating someone providing regular administrative services as an independent contractor.

Sincerely,

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<sup>11</sup> Effective Mar. 26, 1976 (D.C. Law 1-58; 22 DCR 5454).

<sup>12</sup> See 22 DCR 5466.

<sup>13</sup> *Id.*; see “Special Comm. on Advisory Neighborhood Comm’ns Comm. Report No. 1 on Bill 1-193,” Nov. 19, 1975, at 10 (on file) (echoing this statutory language).

<sup>14</sup> Effective Mar. 6, 1991 (D.C. Law 8-203; 37 DCR 8420).

<sup>15</sup> Comm. on Gov’t Operations, “Bill 28-626, the ‘Advisory Neighborhood Commission Act of 1990,’” Oct. 25, 1990, at 7 (on file).